

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

EDWARD JOHNSON,

Petitioner,

v.

Case No. 12-11038

LLOYD RAPELJE,

Respondent.

**ORDER DENYING “MOTION FOR CERTIFICATE OF APPEALABILITY” AND
“APPLICATION TO PROCEED *IN FORMA PAUPERIS* ON APPEAL”**

This matter is before the court on Petitioner's motions for a certificate of appealability and for leave to proceed *in forma pauperis* on his appeal of the dismissal of his habeas petition for failure to correct filing deficiencies. The court declined to issue a certificate of appealability in its dismissal order. The court finds no reason to reconsider that decision. A motion for reconsideration which presents issues already ruled upon by the court, either expressly or by reasonable implication, will generally not be granted. E.D. Mich. LR 7.1(h)(3); *see also Hence v. Smith*, 49 F. Supp. 2d 547, 550-53 (E.D. Mich. 1999). Petitioner has failed to overcome this presumption by showing a palpable defect by which the court has been misled, the correction of which will result in a different disposition of his case. *See* E.D. Mich. LR 7.1(h)(3).¹ The court will therefore deny the motion for a certificate of appealability.

¹Moreover, Petitioner's motion was untimely. Under Local Rule 7.1(h)(1), a motion for reconsideration must be filed within fourteen days after entry of the judgment or order. Petitioner filed his motion more than one month after the court entered its dismissal order.

Additionally, having reviewed the matter, the court finds that an appeal from the court's decision would be frivolous and cannot be taken in good faith. See Fed. R. App. P. 24(a). Thus, the court will also deny Petitioner's request to proceed *in forma pauperis* on appeal. Accordingly,

IT IS ORDERED that Petitioner's "Motion for Certificate of Appealability" [Dkt. # 10] is DENIED.

IT IS FURTHER ORDERED that Petitioner's "Application to Proceed *in Forma Pauperis* on Appeal" [Dkt. #12] is DENIED.

s/Robert H. Cleland
ROBERT H. CLELAND
UNITED STATES DISTRICT JUDGE

Dated: May 31, 2012

I hereby certify that a copy of the foregoing document was mailed to counsel of record on this date, May 31, 2012, by electronic and/or ordinary mail.

s/Lisa Wagner
Case Manager and Deputy Clerk
(313) 234-5522